



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

December 7, 1992

Mr. Kenneth H. Ashworth  
Commissioner  
Texas Higher Education Coordinating Board  
P. O. Box 12788  
Austin, Texas 78711

OR92-685

Dear Mr. Ashworth:

The Texas Higher Education Coordinating Board received a request pursuant to the Texas Open Records Act, article 6252-17a, V.T.C.S., for information about two persons who may have received student loans administered by the board. The Coordinating Board has no records concerning one person but does have information about financial aid received by the other person. You ask whether the information is subject to required public disclosure under the Open Records Act. Your request was assigned ID# 17588.

You have submitted information about a federally-insured loan made to this individual from the Texas Opportunity Plan Fund established by article III, sections 50b and 50b-1 of the Texas Constitution *See* Educ. Code §§ 52.01 - .56 (implementing student loan program authorized by constitution); 19 T.A.C. subch. C; Attorney General Opinion JM-303 (1985). The loan program is called the Hinson-Hazlewood program, after the sponsors of the constitutional amendment and the enabling legislation.<sup>1</sup> Loans made under the Hinson-Hazlewood program are subject to the act and rules of the Higher Education Act of 1965, Title IV, Part B, 20 U.S.C. § 1070 *et seq.*, and the regulations for the Guaranteed Student Loan Program. 19 T.A.C. § 21.54.

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<sup>1</sup> Acts 1965, 59th Leg., ch. 101, at 229 (adopting S.B. 310, which enacted provisions subsequently codified as Education Code, ch. 52); *see* H.J. of Tex., 59th Leg., 3477 (1965) (H.J.R. 11, proposing art. III, § 50b, was sponsored by Rep. Hinson); S.J. of Tex., 59th Leg., 2264 (1965) (S.B. 310, proposing enabling legislation for art. III, § 50b, was sponsored by Sen. Hazlewood); H.J. of Tex., 59th Leg. 3374 (bill identical to S.B. 310 was proposed by Rep. Hinson).

You claim that the information is confidential under section 14(e) of the Open Records Act, which provides that information in education records of an educational agency may not be released except in conformity with the Family Educational Rights and Privacy Act of 1974 (FERPA), 20 U.S.C. § 1232g. Section 34 CFR § 99.31, adopted under FERPA, states the limited conditions under which student financial aid information may be given out. You state that "[s]imilar conditions apply under the Freedom of Information Act and the federal law that provides for the Hinson-Hazlewood program." You believe that the federal provisions cited apply to the requested information, making it confidential pursuant to section 3(a)(1) of the Open Records Act, which excepts from disclosure "information deemed confidential by law, either Constitutional, statutory, or by judicial decision."

The federal Freedom of Information Act does not apply to Texas state agencies such as the Coordinating Board. *See* Attorney General Opinion H-242 (1974) at 4; Open Records Decision No. 504 (1988) at 2 - 3.

Except for FERPA, you have not cited any provision of federal law that provides confidentiality to records in the possession of a state governmental agency, nor have we found any relevant confidentiality provision in the Higher Education Act of 1965, Title IV, Part B.<sup>2</sup>

In OR92-616, we addressed the application of FERPA to information held by the Texas Higher Education Coordinating Board concerning students at Texas institutions of higher education. We determined that the Coordinating Board was an educational agency subject to FERPA. However, its records pertaining to students of Texas colleges and universities were not necessarily "education records" subject to the FERPA restrictions on disclosure to members of the public.

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<sup>2</sup>Section 1099 of title 20, U.S.C., states that "[l]oans made, insured, or guaranteed pursuant to a program authorized by title IV of the Higher Education Act of 1965 (20 U.S.C. 1070 *et seq.*) shall not be subject to any disclosure requirements of any State law." This provision was adopted as part of the Garn-St. Germain Depository Institutions Act of 1982. It applies to state laws that, like the federal Truth in Lending Act, 15 U.S.C. § 1601, require the lender to disclose loan terms to the consumer. *See* P.L. 97-320 § 7.01; 96 Stat. 1538 (adopting 20 U.S.C. § 1099 and exempting loans subject to title IV, Higher Education Act of 1965 from Truth in Lending Act). *See also* S. Rep. No. 536, 97th Cong., 2d Sess. 42, *reprinted in* 1982 CODE CONG. & AD. NEWS 3054, 3096.

"Education records" within FERPA are those records, files, documents, and other materials which

- (i) contain information directly related to a *student*; and
- (ii) are maintained by an educational agency or institution or by a person acting for such agency or institution.

20 U.S.C. § 1232g(a)(4)(A) (emphasis added).

A "student" does not include a person who has not been in attendance at such agency or institution. *Id.* § 1232g(a)(6) (emphasis added). Since the Texas Higher Education Coordinating Board is not an educational agency or institution attended by students, the records that it maintains concerning persons who attend a Texas college or university will not necessarily be "education records" subject to the requirements of FERPA. However, any education records about a student that the Coordinating Board receives from the educational institution attended by the student are subject to FERPA. The following regulation promulgated under FERPA addresses transfers of education records to institutions like the Coordinating Board:

An educational agency or institution may disclose personally identifiable information from an education record only on the condition that the party to whom the information is disclosed will not disclose the information to any other party without the prior consent of the parent or eligible student.

The officers, employees, and agents of a party that receives information under paragraph (a)(1) of this section may use the information, but only for the purposes for which the disclosure was made.

34 C.F.R. § 99.33 (a)(1), (2). *See also* 34 C.F.R. §§ 99.31, 99.35 (permitting educational agency or institution to disclose information from student's educational records to state educational authorities or in connection with the student's application for or receipt of financial aid if receiving agency does not further disclose information).

Thus, as stated more fully in OR92-616, student records transferred to the Coordinating Board by the college or university attended by the student will be confidential under FERPA, while other records about the student prepared by the Coordinating Board or received from other sources will not be subject to the FERPA protections. A copy of OR92-616 is attached.

Accordingly, records in the individual's financial aid file that the Coordinating Board received from an educational institution at which the individual was a student are excepted from public disclosure by FERPA. Records generated by the Coordinating Board, such as internal records or copies of correspondence the board sent to the student or to another person, are not within the protection of FERPA.

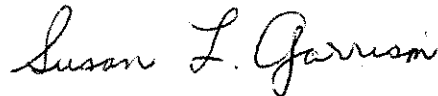
We have examined the documents you submitted. Some of them, including the loan application forms, are signed by the registrar or another person on behalf of the educational institution attended by the loan recipient. These documents thus show on their face that they are education records of the loan recipient forwarded to the Coordinating Board by his educational institution. They are accordingly confidential pursuant to section 14(e) of the Open Records Act, incorporating the requirements of FERPA. We have marked the records that we have determined to be excepted from disclosure by section 14(e) of the Open Records Act.

We have determined that other documents in the file are not education records of the loan recipient protected by section 14(e). These include print-outs of the loan balance prepared by the Coordinating Board, correspondence received by the board from someone other than an agent of an academic institution attended by the student, copies of letters sent out by the board, and records of board employees' telephone conversations concerning the loan. These items of information are not protected from public disclosure by section 14(e) of the Open Records Act, nor by the privacy rights recognized by section 3(a)(1) of the Act. *See* Open Records Decision No. 480 (1987). We have marked these records accordingly.

We have been unable to determine whether certain records, in particular the promissory notes signed by the loan recipient, were forwarded to the Coordinating Board by the educational institution that he attended, or were sent in by another entity. We have marked these documents with a question mark so that you can determine in accordance with OR92-616 and our discussion of FERPA in this ruling whether or not they are excepted from public disclosure by section 14(e) of the Open Records Act.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please refer to OR92-685.

Yours very truly,



Susan L. Garrison  
Assistant Attorney General  
Opinion Committee

SLG/lmm

Ref.: ID# 17588

Enclosures: Open Records Decision No. 480  
Open Records Letter 92-616

cc: Ms. Christy Hoppe  
Reporter  
The Dallas Morning News  
Austin Bureau  
1005 Congress Avenue, Suite 930  
Austin, Texas 78701  
(w/o enclosures)